

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q64735

Dominique CHANTRAIN, et al.

Appln. No.: 09/891,545

Group Art Unit: 2153

Confirmation No.: 1856

Examiner: Yasin M. BARQADLE

Filed: June 27, 2001

For: A METHOD FOR ENABLING A USER ALREADY CONNECTED TO A VIRTUAL PRIVATE NETWORK TO COMMUNICATE WITH A COMMUNICATION DEVICE NOT BELONGING TO THIS VIRTUAL PRIVATE NETWORK AND CORRESPONDING NETWORK ACCESS SERVER

REQUEST FOR PANEL DECISION ON PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Request For Reconsideration, Notice of Appeal and a Request for Pre-Appeal Brief Review (the Request for Pre-Appeal Brief Review will hereinafter be referred to as “the Request”) were filed together on July 26, 2006. An Advisory Action was mailed August 29, 2006, in which the examiner responded to the arguments in the Request for Reconsideration. A Second Request For Reconsideration was filed on September 25, 2006. No Panel Decision on the Request for Pre-Appeal Brief Review has been received. A second Advisory Action was mailed on November 13, 2006, indicating that an appeal brief was due, but not acknowledging the filing of the Request. The undersigned then filed a status inquiry on November 27, pointing out that a Decision was still due on the Request. A Notice of Panel Decision was then mailed on

December 21, 2006, holding the Request as improper. The grounds for holding the Request as improper are erroneous, and a Panel Decision on the Request is again requested.

The first grounds for holding the request improper are that the Notice of Appeal was not filed concurrent with the Pre-Appeal Brief Request. This is untrue. A Notice of Appeal was filed on July 26, 2006, concurrently with the Request. The Notice of Appeal is available in the USPTO image file wrapper for this case, and is also shown in the transaction history as being filed on that date.

The second grounds for holding the Request as improper is “Other: Request for reconsideration was filed after the Pre-Appeal Conference Request.” Even if this were a valid grounds for holding a review request as improper, it is noted that the guidelines for the filing of and consideration of a Request for Pre-Appeal Brief Conference, set forth in the Official Gazette Notice of July 12, 2005, state that a decision should be mailed within 45 days of filing the request, which is well before the Second Request for Reconsideration, so a decision should have been mailed before then in any event.

Further, and more importantly, this is not a valid ground for holding the Request improper. The guidelines set forth in the Official Gazette Notice of July 12, 2005, near the end of the section entitled “1. General Provisions” include a very clear list of actions which will terminate a panel review:

What actions will terminate the panel's review?

If applicant files any of the following responses after filing a request, but prior to a decision by the appointed panel of examiners assigned to conduct the review, the review process will end and a decision will not be made on the merits of the request:

- an appeal brief
- a request for continued examination (RCE)
- an after-final amendment
- an affidavit or other evidence
- an express abandonment

Clearly **not** included in this list is the filing of a further request for reconsideration.

There have been no amendments or proposed amendments filed either with the Request or subsequent to the Request. All of the requirements for a request for panel review have been complied with, and appellants are entitled to a panel decision on the merits of the Request.

For the above reasons, a further Decision by the Panel on the Request for Pre-Appeal Brief Review filed July 26, 2006 is respectfully requested.

Respectfully submitted,

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

/DJCushing/
David J. Cushing
Registration No. 28,703

Date: December 28, 2006